

**REMARKS**

Claims 1-18 were pending in this application.

Claims 1-8 and 10-17 have been rejected.

Claims 9, 10, and 18 have been objected to.

Claims 1, 3, 4, 6-10, and 12-18 have been amended as shown above.

Claims 19 and 20 have been added.

Claims 1-20 are now pending in this application.

Reconsideration and full allowance of Claims 1-20 are respectfully requested.

**I. ALLOWABLE CLAIMS**

The Applicant thanks the Examiner for the indication that Claims 9 and 18 would be allowable if rewritten in independent form to incorporate the elements of their respective base claims and any intervening claims. Because the Applicant believes that the remaining claims in this application are allowable, the Applicant has not rewritten Claims 9 and 18 in independent form.

**II. OBJECTIONS TO CLAIMS**

The Office Action objects to Claim 10 because Claim 10 recites the numeral "2" instead of the word "two." The Applicant has amended Claim 10 to replace the numeral "2" with the word "two." The Applicant respectfully requests withdrawal of the objection.

**III. REJECTION UNDER 35 U.S.C. § 102**

The Office Action rejects Claims 1-3, 5, 6, 8, 10-12, 14, and 15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,880,441 to Gillespie et al. ("*Gillespie*"). This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

*Gillespie* recites methods for recognizing cursor motions and gestures made on a touch-sensor pad. (*Abstract*). *Gillespie* notes that the sensor can "detect and report" if one or more points are being touched on the pad. (*Col. 5, Lines 49-51*). However, *Gillespie* notes that the sensor can "only report the position of one object on its sensor surface." (*Col. 6, Lines 46-47*). When multiple points are being touched on the sensor, the sensor identifies the "centroid position" of the "combined set" of objects. (*Col. 6, Lines 47-50*). The centroid position is then used to perform various functions. (*See, e.g., Col. 19, Lines 35-39*).

These portions of *Gillespie* simply recite that multiple points can be touched on a sensor but that the sensor identifies only the "centroid position" of the points. These portions of *Gillespie* lack any mention of identifying the "locations" of "at least two points" being "simultaneously touched" as recited in Claim 1. These portions of *Gillespie* also lack any mention of identifying the

“locations” of “two or more touch points” being “simultaneously touched” as recited in Claim 10.

As a result, these portions of *Gillespie* fail to anticipate all elements of Claims 1 and 10.

For these reasons, the Office Action has not shown that *Gillespie* anticipates the Applicant’s invention as recited in Claims 1 and 10 (and their dependent claims). Accordingly, the Applicant respectfully requests withdrawal of the § 102 rejection and full allowance of Claims 1-3, 5, 6, 8, 10-12, 14, and 15.

#### IV. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 4, 7, 13, 16, and 17 under 35 U.S.C. § 103(a) as being unpatentable over *Gillespie* in view of U.S. Patent No. 5,825,352 to Bisset et al. (“*Bisset*”). This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant

of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's disclosure. MPEP § 2142.

Claims 4 and 7 depend from Claim 1, and Claims 13, 16, and 17 depend from Claim 10. As described above in Section III, Claims 1 and 10 are patentable. As a result, Claims 4, 7, 13, 16, and 17 are patentable due to their dependence from allowable base claims.

Moreover, Claims 4 and 13 recite the use of "strain gauges." The Office Action asserts that *Gillespie* fails to teach that a pressure sensing device or a pressure sensor comprises a strain gauge, that *Bisset* teaches the use of a sensor pad having strain gauges, and that it would be obvious to combine *Gillespie* and *Bisset*. (*Office Action, Page 5, Last paragraph – Page 6, First paragraph*). However, *Gillespie* describes the use of strain gauges and then discusses problems associated with the use of strain gauges. (*Col. 2, Lines 1-8*). Based on this, *Gillespie* actually teaches away from

using strain gauges, and the Office Action cannot show that one skilled in the art would be motivated to use the strain gauges of *Bisset* in the system of *Gillespie*.

For these reasons, the Office Action has not established a *prima facie* case of obviousness against Claims 4, 7, 13, 16, and 17. Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection and full allowance of Claims 4, 7, 13, 16, and 17.

V. **CONCLUSION**

The Applicant respectfully asserts that all pending claims in the application are in condition for allowance and respectfully requests an early allowance of such claims.

**SUMMARY**


If any issues arise, or if the Examiner has any suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: Jan. 28, 2004

  
\_\_\_\_\_  
William A. Munck  
Registration No. 39,308

P.O. Drawer 800889  
Dallas, Texas 75380  
(972) 628-3600 (main number)  
(972) 628-3616 (fax)  
E-mail: *wmunck@davismunck.com*